HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION Nos.6685, 6799, 6800, 6801, 6802, 6804, 6805, 6806 AND 6811 OF 2007

WRIT PETITION No. 6685 OF 2007

Between:

Mariamma Varghese and another

…Petitioners

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and three others

...Respondents

WRIT PETITION No. 6799 OF 2007

Between:

A. Hari Prakash

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and three others

...Respondents

WRIT PETITION No. 6800 OF 2007

Between:

M. Chandra Swamy

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and three others

...Respondents

WRIT PETITION No. 6801 OF 2007

Between:

K. Yella Reddy

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and three others

...Respondents

WRIT PETITION No. 6802 OF 2007

Between:

R.J. Hari Krishna

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and three others

...Respondents

WRIT PETITION No. 6804 OF 2007

Between:

D. Ramesh

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and three others

...Respondents

WRIT PETITION No. 6805 OF 2007

Between:

Ch. Ravi Kiran

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and three others

...Respondents

WRIT PETITION No. 6806 OF 2007

Between:

P.V.S. Venu Gopal and another

…Petitioners

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and three others

...Respondents

WRIT PETITION No. 6811 OF 2007

Between:

P. Sunanda Sarath

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and three others

...Respondents

: COMMON ORDER :

Counsel for the petitioners : Shri D. Prakash Reddy,
Senior Advocate assisted by
Shri Harender Pershad
Counsel for respondent No.1 : Shri P. Radhakrishna

Counsel for respondent Nos.2 & 3 : Shri G. Vidyasagar

Counsel for respondent No.4 : Smt. Kalpana Ekbote

July 17, 2007

Per G.S.SINGHVI, CJ

The above noted writ petitions have been filed by the purchasers/occupiers of building known as Aishwarya Apartments for quashing final notices dated 15-2-2007 issued by Commissioner, Malkajgiri Municipality, Ranga Reddy District for removing the alleged setback violations.

The prayer of the petitioners is founded on the assertion that at the time of purchase of different portions of Aishwarya Apartments from its owner and builder M/s. Sree Sai Sagar Builders (respondent Nos.2 and 3 herein herein), they did not know of any setback violation. According to them, the builder constructed the apartments on Plot No. 630, Survey No. 218/1 of Defence Colony, Malkajgiri Municipality (for

short, 'the Municipality') and they purchased different portions under registered sale deeds; that even though the impugned notice makes a reference to provisional order dated 17-5-2003 issued under Sections 228 (1) and (2) of Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act') and confirmation order dated 28-5-2003 issued under Section 228 (3) of the Act, no show cause notice and opportunity of hearing was given to them; that the alleged violations made by the builder are within the permissible limits and that they cannot be deprived of their property without following the procedure established by law and without complying with the rules of natural justice.

In the counter-affidavit filed by him, Shri D. John Samson, Commissioner, Malkajgiri Municipality has averred as under:

(i) that one Sri G. Shanta Kumari applied for permission for construction of apartments in Plot No. 630, Survey No. 218/1, Defence Colony;

(ii) that he granted permission for ground + two vide proceedings No. G2/986/2002, dated 9-1-2003;

(iii) that provisional order dated 17-5-2003 was issued under Section 228 (1) and (2) of the Act and confirmation order dated 28-5-2003 was issued under Section 228 (3) of the Act requiring the builder to remove the violations;

(iv) that provisional order was served on the vendor of the petitioners, but the builder did not respond to the notice and, therefore, confirmation order was issued on 28-5-2003.

According to Shri Samson, the petitioners had purchased apartments after issue of confirmation order under Section 228 (3) of the Act and, therefore, it was not necessary to issue notices to them.

We have heard learned counsel for the parties and carefully scrutinized the record. The notice issued to one of the petitioners,

namely, Smt. Mariamma Varghese (petitioner in Writ Petition No.6685 of 2007) reads as under:

"**OFFICE OF THE MUNICIPAL COUNCIL MALKAJGIRI**
RANGA REDDY DISTRICT

FINAL NOTICE

Lr.No.G2/226/2005 **Dt.15.02.2007**

Sub: Malkajgiri Municipality – Illegal Constructions in Defence Colony-W.P.879 of 2005 on the file of Hon'ble High Court filed by O.Yella Reddy – Notice issued as per the orders of Hon'ble High Court – regarding.

Ref: 1. This Office Provisional Order, dated 17-5-2003 issued under section 228 (1) & (2) of APM Act 1965.
2. This Office Confirmation Order, dated 28-5-2003 issued under section 228 (3) of APM Act, 1965.
3. Judgment of Hon'ble High Court in W.P.No.879 of 2005, dated: 22-01-2007.

***

Please take notice that, you have constructed residential apartments in Plot No. 630, Sy.No.218/1 of Defence Colony Malkajgiri by deviating to the Technically approved plan by HUDA vide Lr.No.--, Dt.-- and this office Proceedings No. G2/986/2002, dt. 9-1-2003 i.e. set back violations.

As per the Judgment of the Hon'ble High Court in W.P.No.879 of 2005, you are hereby directed to remove the set back violations voluntarily within a period of one month from the date of receipt of this notice, failing which the same violations will be removed departmentally.

Commissioner
Malkajgiri Municipality

To
Mrs. Mariamma Varchese, Flat No. 1B,
Plot No. 630, Sai Aiswarta Apt.,
Sy.No.218/1,
Defence Colony,
Malkajgiri."

At the hearing, we asked Shri P. Radhakrishna, learned counsel for the Municipality to show that provisional and confirmation orders passed on 17-5-2003 and 28-5-2003 respectively were served on respondent Nos. 2 and 3 in accordance with Section 353 of the Act. In

reply, learned counsel fairly stated that the records made available to him do not show that either of the two orders was tendered to respondent Nos.2 and 3 or that the alternative mode was adopted, because respondent Nos.2 and 3 were not found at the given address.

In view of the statement made by the learned counsel for the Municipality, there is no escape from the conclusion that notice had not been served on respondent No.2. Section 353 of the Act, which prescribes method of serving documents etc., reads as under:

> "**353. Method of serving documents :--** (1) When any notice, or other documents is required by this Act or by any rule, bye-law, regulation or order made under it, is to be served on or sent to any person, the service or sending thereof may be effected—
>
> (a) by giving or tendering the said document to such person; or
>
> (b) if such person is not found, by leaving such document at his last known place of abode or business or by giving or tendering the same to some adult member or servant of his family; or
>
> (c) if such person does not reside in the municipality and his address elsewhere is known to the Commissioner by sending the same to him by post registered; or
>
> (d) if none of the means aforesaid be available, by fixing the same in some conspicuous part of such place of abode or business.
>
> (2) Where the person is an owner or occupier of any building or land, it shall not be necessary to name the owner or occupier in the notice or document, and in the case of joint owners and occupiers it shall be sufficient to serve it on, or sent it to, one of such owners or occupiers.
>
> (3) Whenever in any bill, notice, form or other document, served or sent under this Act, a period is fixed within which any tax or other sum is to be paid or any work executed or anything provided, such period shall save as otherwise provided in this Act, be calculated from the date of such service or sending."

A bare reading of the above reproduced provision makes it clear that the notice required to be given under Section 228 (1) and (2) of the Act has to be tendered to the affected person. The alternative mode envisaged in clauses (b), (c) and (d) of sub-section (1) of Section 353 can be resorted to only if the person to whom the notice is addressed is not found or does not reside in the municipality or the notice cannot be served in accordance with clauses (b) or (c).

In the present case, the provisional order issued under Section 228 (1) and (2) and confirmation order issued under Section 228 (3) are not shown to have been tendered to the builder i.e., respondent Nos. 2 and 3. Therefore, the same cannot be treated as served on the said respondents.

As a sequel to the above, it must be held that notices dated 15.2.2007 issued to the petitioners for removing the violations on the assumption that the builder had not done so despite service of provisional and confirmation orders cannot be sustained.

In the result, the writ petitions are allowed and the impugned notices are quashed. However, with a view to avoid unnecessary litigation on the ground of violation of the procedural aspect or the rules of natural justice, we deem it proper to issue the following directions:

1) The petitioners and respondent Nos.2 and 3 will be deemed to have been put on notice regarding violations of the sanctioned plan.

2) Within one month from today, the petitioners and respondent Nos.2 and 3 may submit their written objections/ representations against the proposed removal of violations. They shall submit their representations to Deputy Commissioner, Greater Hyderabad Municipal Corporation, Malkajgiri Circle (this is being done because Malkajgiri Municipality has merged in Greater Hyderabad Municipal Corporation).

3) Within next six weeks, the competent authority shall hear the petitioners and respondent Nos.2 and 3 or their authorized representatives, wherever a written request for hearing is made, consider the representations/objections and pass speaking orders in the matter of removal of the violations or otherwise.

4) If the competent authority comes to the conclusion that

respondent Nos.2 and 3 has not violated the sanctioned plan, then the notices issued to the petitioners and respondent Nos.2 and 3 shall be dropped. If, on the other hand, the competent authority comes to the conclusion that the building has been constructed in violation of the sanctioned plan, then the final order be communicated to the petitioners and respondent Nos.2 and 3 and they be given reasonable time to remove the violations.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 17, 2007

ks